

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

O R D E R

Frederick Banks ("Defendant") has filed a motion entitled "Motion to Dismiss or in the Alternative Re-sentence for Lack of Subject Matter Jurisdiction Fed.R.Crim.Pro 12(b) (3),"<sup>1</sup> in which he argues that his equal protection rights arising from the due process clause of the Fifth Amendment to the United States Constitution were violated by the sentence imposed in this case. (See Docket No. 577, "the Motion," at 1-2.)

At trial, Defendant was found guilty of eight counts of mail fraud in violation of 18 U.S.C. § 1341. On March 13, 2006, he was ordered to pay \$15,100.10 in restitution and sentenced to a period of 63 months imprisonment to be served consecutively to a 60-month sentence he was already serving for a prior conviction. Defendant argues he was sentenced more severely than white defendants who had been convicted of the same or similar crimes of fraud simply because he is a member of three protected classes, i.e., Lakota

<sup>1</sup> Defendant does not explain, and the Court is unable to determine from the content of his motion, how Federal Rule of Criminal Procedure 12(b) (3), pertaining to motions which must be made before trial, figures into his argument.

Sioux Native American Indian, African-American, and "mulatto." This discrimination, he contends, was "not simply incidental, it was purposeful and intentional." (Motion at 4.) Consequently, Defendant argues that an evidentiary hearing must be held and his case dismissed with prejudice; alternatively, his sentence should be reduced to time served.

The Court need not address the question of whether Defendant has raised a valid Constitutional claim because the cases on which he relies for his argument of racial discrimination in sentencing are entirely unpersuasive. Defendant identifies six cases arising in this Circuit, each allegedly involving a white defendant whose fraudulent activity was greater than his, but whose sentences, by Defendant's calculations, were proportionately less: United States v. Hawes, 523 F.3d 245 (3d Cir. 2008);<sup>2</sup> United States v. Komolafe, No. 06-1683, 2007 U.S. App. LEXIS 21022 (3d Cir. Aug. 31, 2007); United States v. Williams, 299 F.3d 250 (3d Cir. 2002); United States v. Tichell, 261 F.3d 348 (3d Cir. 2001); Regano v. United States, CR No. 06-3091, 2008 U.S. Dist. LEXIS 31855 (N.D. Ohio Apr. 17, 2008);<sup>3</sup> and United States v. Smith, CR No. 06-86, 2007 U.S.

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<sup>2</sup> Defendant cites to another opinion in Hawes, published at 2008 U.S. App. LEXIS 6348 (3d Cir. Mar. 27, 2008). That opinion was withdrawn and an opinion at the citation in the text above substituted.

<sup>3</sup> Defendant apparently considers this case relevant because a federal grand jury sitting in the Western District of Pennsylvania returned the indictment to which Regano eventually pled guilty in Ohio. See 2008 U.S. Dist. LEXIS 31855 at \*1-\*2.

Dist. LEXIS 34391 (W.D. Pa. May 10, 2007).

The cases relied upon by defendant do not reflect the defendant's race or ethnic origin. Therefore, these cases do not support Defendant's argument while the pleadings of a *pro se* litigant are to be construed liberally, this Court is not required to credit his "bald assertions" or "legal conclusions." Day v. Fed. Bureau of Prisons, No. 06-3911, 2007 U.S. App. LEXIS 9927, \*2 (3d Cir. Apr. 30, 2007), citing Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997). Defendant's motion now pending at Docket No. 577 is therefore denied in its entirety.

February 20, 2009

/s/ Joy Flowers Conti  
Joy Flowers Conti  
United States District Judge

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